

**TESTIMONY
SB 369**

**Before the
House Federal Relations, Energy and Telecommunications Committee
March 19, 2007**

**By Gary Wiens
Montana Electric Cooperatives' Association**

Mr. Chairman, members of the committee, for the record, my name is Gary Wiens, representing Montana Electric Cooperatives' Association. The 25 consumer-owned co-ops we represent provide electricity service to nearly 400,000 Montanans.

As Senator Smith indicated, this is a bill that would eliminate from the electric cooperative enabling law a 2001 amendment. By repealing this 2001 amendment, Senate Bill 369 would allow Flathead Electric, a locally owned, locally governed co-op, to charge a fair rate for attachment of cables to the co-op's poles. Because of the 2001 amendment, the law now says Flathead Electric can charge attachment rates no higher than the Federal Communications Commission attachment formulas. Under these formulas, cable TV is charged a substantially lower rate than telecommunications companies.

Although this bill addresses a matter between two private companies, it is primarily the anomaly of the 2001 amendment being inserted into our co-ops' enabling law that brings us here today. In other words, it is the continued presence of this provision in current law that caused the co-ops to seek passage of a bill that repeals it.

However, as Senator Smith also mentioned, we are pleased an amendment to SB 369 has been agreed to that you'll hear about from subsequent proponents.

From our perspective, repeal of the 2001 amendment now in law that SB 369 repeals is needed in part because of changes in the telecommunications industry. Some cable TV companies have expanded their services to include telecommunications such as digital phone service. Passage of SB 369 would allow Flathead Electric to

respond to these changes by charging pole attachment rates to these companies that are identical to those being charged competing telecommunications companies.

As I mentioned, the repeal of the 2001 amendment directly affects Flathead Electric but has ramifications for all electric cooperatives. Because of the 2001 amendment, any co-op buying poles and wires from an investor-owned utility could be subjected to the regulation imposed by the 2001 amendment now in law.

The Legislature's rationale in declining to regulate electric cooperatives has always been to point out that our cooperative utilities are locally owned and governed by co-op trustees democratically elected by their consumer-owners. To date, we think the co-ops have earned the local control to which they have been entrusted.

The same applies to the question of whether co-ops should have local control on setting rates to charge cable TV and telecommunications companies to attach their cables. Congress pointed this out with passage of the Communications Act in 1978, when it deliberately chose not to regulate co-ops on pole attachments, declaring pole rates charged by cooperative utilities are "already subject to a decision-making process based upon constituent needs and interests." In 1996, Congress reaffirmed this exemption with passage of the Telecommunications Act.

In summary, Senate Bill 369 boils down to fairness and restoring local control to one of Montana's electric cooperatives. This bill is also about deciding whether an anomaly in the co-op enabling law that affects one co-op but has ramifications for all electric co-ops should be removed. As such and especially in view of the agreement that has been reached, we urge a do-pass recommendation on this bill.